ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 3, 2007

Ms. Laura M. Jamouneau
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2007-12910

Dear Ms. Jamouneau:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 290874.

The New Caney Independent School District (the "district"), which you represent, received a request for an itemized attorney fee bill for the month of May 2007. You claim that the requested information is excepted from disclosure under section 552.107 of the Government Code and Texas Rule of Evidence 503. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.301 of the Government prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). In this case, the district received the request for information on July 3, 2007. The district claims that it released the responsive information on July 9, 2007. However, upon review of the request for information, copies of which were submitted by both the requestor and the district, the request very clearly was one for "copies of all May 2007 *itemized* attorney fee bills." The document released on July 9, 2007 in response to the request was merely an account summary, information which was not requested. The district makes no claims, nor is there any indication, that it sought a clarification from the requestor, which would have tolled the

deadlines mandated under section 552.301.[1] Since the district received the request for information on July 3, 2007, the tenth business day henceforth was July 18, 2007. However, the district did not request a ruling from this office or submit the information at issue until July 27, 2007. Thus, the district failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you raise the attorney-client privilege for this information, this privilege is discretionary in nature. It serves only to protect a governmental body's interest and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 does not provide compelling reason for purposes of section 552.302 if it does not implicate third-party rights), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (governmental body may waive section 552.107), 630 at 4 (1994) (governmental body may waive attorney-client privilege). In this instance, you do not assert that any third-party interests are implicated. Accordingly, the district may not withhold the submitted information under the attorney-client privilege encompassed under section 552.107 of the Government Code or rule 503 of the Texas Rules of Evidence. Because you do not raise any other exceptions to disclosure, the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

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[1]In Open Records Decision No. 663 (1999), this office determined that during the interval in which a governmental body and a requestor communicate in good faith to narrow or clarify a request, the Act permits a tolling of the statutory ten-business-day deadline imposed by section 552.301. ORD 663 at 5 (ten-day deadline is tolled during process but resumes, upon receipt of clarification or narrowing response, on day that clarification is received). *See also* Gov't Code 552.222(b) (stating that "[i]f what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request.")

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/mcf

Ref: ID# 290874

Enc. Submitted documents

c: Mr. Howard Bass
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Conroe, Texas 77385
(w/o enclosures)